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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,796	12/03/2001	Neil James Gordon	7640	8548

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 07/22/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/980,796	Applicant(s) GORDON	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *Amend. filed 5/19/03* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. Claims 11-30 are pending. Applicant's arguments and amendments filed 5/21/03 have been entered.

Priority

The claim of priority under 35 USC 119(e) to 60/141557 filed 6/29/99 is acknowledged.

Objections/Rejections Withdrawn

2. The following objections/rejections as set forth in Paper #5 have been withdrawn:

The objection to the specification as failing to contain an Abstract has been withdrawn.

The rejection of claims 11-30 under 35 USC 112, second paragraph, has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to the instant claims 11-30, these claims are vague and indefinite in that it is unclear what is meant by "at least about". Note that, the court has held that claims reciting "at least about" were invalid for indefiniteness where there was close

prior art and there was nothing in the specification, prosecution history, or the prior art to provide any inciation as to what range of specific activity is covered by the term "about". Amgen, Inc. v. Chugai Pharmaceutical Co., 927 F.2d 1200, 18 USPQ 2d 1016 (Fed. Cir. 1991). See MPEP 2173.05(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meixner et al (WO 98/17764) in view of Boeckh et al (US 6,025,322).

Meixner et al teach the use of corsslinked nitrogenous compounds which are soluble or dispersible in water and are obtainable by corsslinking of compounds containing at least three NH groups with at least bifunctional corsslinkers which react with NH groups, in detergents and cleaners, especially soil release agents. Crosslinked nitrogenous compounds can be obtained by crosslinking of compounds containing at least three NH groups. Suitable compounds include oligo- and polyamines, polyalkylenepolyamines, polyamidoamines, polyamidoamines grafted with (poly)ethyleneimine, and mixtures thereof. Suitable polyamidoamines are obtained by reacting dicarboxylic acids having 4 to 10 carbon atoms with polyalkylenepolyamine containing 3 to 20 basic nitrogen atoms in the molecule. Examples of suitable dicarboxylic acids are succinic acid, maleic acid, adipic acid, glutaric acid, suberic acid, etc. Suitable polyalkylenepolyamines condensed with the dicarboxylic acids include diethylenetriamine, triethylenetetramine, dipropylenetriamine, etc. See column 3, lines 20-40. Note that, the Examiner asserts that the polyamidoamine compounds as taught and suggested by Meixner et al would encompass those compounds as recited by the instant claims. Surfactants may also be used in the compositions in amounts from 3% to 30% by weight and suitable nonionic surfactants include alkoxylated C8-C22 alcohols

such as fatty alcohol alkoxylates. From 2 to 50 moles of alkylene oxide are used per mole of alcohol. See column 14, lines 48-69.

These detergent compounds are used in detergent compositions suitable for washing textiles which preferably contain at least one enzyme. See column 11, lines 10-35.

Note that, with respect to instant claim 24, this claim is a product by process claim and the patentablility of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113.

Meixner et al do not specifically teach the use of an imidazole containing dye protection system of a cleaning composition containing the specific modified polyamine polymer, an imidazole containing dye protection system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Boeckh et al teach detergent compositions containing 1 to 50% by weight of at leas one nonionic surfactant, 0 to 4% by weight of an anionic surfactant, and 0.05 to 2.5% by weight of at least one polycationic condensate which is obtainable by condensing piperazine, imidazole, etc. with alkylene dihalides, epihalohydrins, etc. See column 2, line 50 to column 3, line 15. The polycationic condensates particularly preferably employed for the compositions are those obtainable by reacting piperazine

and/or imidazole with epihalohydrin. See column 2, lines 30-36. The polycationic are used either as an additive to detergents or as an additive to fabric conditioners. The cationic condensates prevent or suppress release of dyes from colored textiles during the washing process or during the after treatment. See column 2, lines 35-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an imidazole containing dye protection system (polycationic condensate) in the composition taught by Meixner et al, with a reasonable expectation of success, because Boeckh et al teach the advantageous dye inhibition properties imparted to a similar detergent composition utilizing an imidazole containing dye protection system (polycationic condensate) as noted above, and further, Meixner et al teach the use of color transfer inhibitors in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing the specific modified polyamine polymer, an imidazole containing dye protection system, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Meixner et al in combination with Boeckh et al suggest a cleaning composition containing the specific modified polyamine polymer, an imidazole containing dye protection system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 11-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 09/655121, claims 39-54 of 09/890678 and claims 31 and 33-50 of 09/890676. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-31 of copending Application No. 09/655121, claims 39-54 of 09/890678 and claims 31 and 33-50 of 09/890676 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to Meixner et al and Boeckh et al, Applicant states that neither reference recognizes the potential problem with modified polyamine compounds and, therefore do not teach or suggest the combination of modified polyamine compounds and oligomers formed from the reaction of 1 part of an epihalohydrin and from 0.5 to 2

parts of an imidazole, to provide fabric care benefits without the potential drawback of heavy metal ion chelation of certain fabric dyes by the modified polyamine compounds, as presently claimed. Note that, in response, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972). The Examiner asserts that there is clear motivation to use the polycationic condensates taught by Boeckh et al, with a reasonable expectation of success, because Boeckh et al teach that these condensates provide color transfer inhibiting and color release reduction in a similar composition.

Also, Applicant states that Boeckh et al does not disclose polycationic condensates obtained by reacting 1 part of epichlorohydrin and at least about 1.4 parts of imidazole as required by instant claims 17, 18, 20, and 26. In response, note that, the claims recited "at least about" which would encompass additionally 1.25 parts of piperazine and/or imidazole. Alternatively, even if at least about would not encompass 1.4 as recited by the instant claims,a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
July 18, 2003

GREGORY DELCOTTO
PRIMARY EXAMINER